



## Sanderling Avenue Hawks Nest Planning Agreement

**In respect of Lot 1 DP 1234229, also known as Sanderling  
Avenue Hawks Nest**

**11 June 2021**

Mid-Coast Council

*ABN 44 961 208 161*

and

Core Property Development Pty Ltd

*ACN 614 364 519*

and

Leric Group Pty Ltd

*ACN 160 854 562*

# Contents

<b>Parties</b>	<b>1</b>
<b>Background</b>	<b>1</b>
<b>Operative part</b>	<b>1</b>
1 <i>Definitions</i>	1
2 <i>Interpretation</i>	3
3 <i>Planning Agreement under the Act</i>	5
4 <i>Application of this agreement</i>	5
5 <i>Operation of this agreement</i>	5
6 <i>Contributions to be made under this agreement</i>	5
6.1     Monetary Contribution	5
7 <i>Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development</i>	6
8 <i>Registration of this agreement</i>	6
8.1     Developers Interest	6
8.2     Registration of this agreement	6
8.3     Removal from Register	6
8.4     Caveat	7
9 <i>Review of this agreement</i>	7
10 <i>Dispute Resolution</i>	7
10.1    Reference to Dispute	7
10.2    Notice of Dispute	7
10.3    Representatives of Parties to Meet	7
10.4    Further Notice if Not Settled	8
10.5    Mediation	8
10.6    Litigation	9
10.7    No suspension of contractual obligations	9
11 <i>Enforcement</i>	9
11.1    Default	9
11.2    Bank Guarantee	9
11.3    Restriction on Certificates	10
11.4    General Enforcement	10
12 <i>Assignment and Dealings</i>	10
12.1    Assignment	10
12.2    Transfer of Land	11

	12.3 Dealings	11
13	<i>Approvals and consents</i>	11
14	<i>No fetter</i>	11
	14.1 Discretion	11
	14.2 No fetter	11
15	<i>Notices</i>	12
	15.1 Notices	12
16	<i>General</i>	13
	16.1 Relationship between parties	13
	16.2 Time for doing acts	13
	16.3 Further assurances	13
	16.4 Variation	13
	16.5 Records	13
	16.6 Counterparts	13
	16.7 Legal expenses and stamp duty	14
	16.8 Entire agreement	14
	16.9 Representations and warranties	14
	16.10 Severability	14
	16.11 Invalidity	14
	16.12 Waiver	14
	16.13 GST	15
	16.14 Governing law and jurisdiction	15
	16.15 Survival	15
	16.16 Trustee warranties and obligations	15
	<b>Schedule 1 Monetary Contributions</b>	<b>17</b>
	<b>Schedule 2 Summary of requirements (section 7.4)</b>	<b>18</b>
	<b>Annexure A Plan showing Land</b>	<b>22</b>
	<b>Annexure B Explanatory Note</b>	<b>23</b>

# Agreement

## Date

## Parties

### First party

**Name** Mid-Coast Council (**Council**)  
**ABN** 44 961 208 161  
**Contact** Manager Land Use Planning  
**Telephone** 02 7955 7777

### Second party

**Name** Core Property Development Pty Ltd ACN 614 364  
519 (**Core Property**) as trustee for Core Property  
Discretionary Trust (ABN 58 144 326 463)  
**Contact** Luke Goodwin  
**Telephone** 0413 544 544

### Third party

**Name** Leric Group Pty Ltd (**Leric Group**) ACN 160 854  
562 as trustee for Hawks Nest Discretionary Trust  
(ABN 51 478 521 341)  
**Contact** M Ibrahim  
**Telephone** 0402 885 544

## Background

- A. The Developers own the Land.
- B. The Developers propose to carry out the Development.
- C. To facilitate the Development, the Developers lodged the Planning Proposal, which received Gateway Determination from the Department of Planning and Environment on 30 September 2019.
- D. The Developers have made an offer to enter into this agreement to provide public amenities and environmental benefits in connection with the Planning Proposal and future Development of the Land.

## Operative part

### 1 Definitions

In this agreement, unless the context indicates a contrary intention:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW);



**Address** means a party's address set out in the Notices clause of this agreement;

**Approval** means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

**Bank Guarantee** means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank,
- (e) St George Bank Limited,
- (f) Westpac Banking Corporation, or
- (g) Other financial institution approved by Council,

to pay an amount or amounts of money to Council on demand and containing terms and conditions reasonably acceptable to Council;

**Business Day** means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

**Claim** means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

**Construction Certificate** means a construction certificate as defined under section 6.4(a) of the Act;

**CPI** means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

**Damages** means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

**Developers** means Core Property and Leric Group jointly and severally;

**Development** means the development of the Land, including medium density residential accommodation;

**Development Application** has the same meaning as in the Act;

**Development Consent** has the same meaning as in the Act;

**GST** has the same meaning as in the GST Law;

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition of or administration of the GST;

**Instrument Change** means an amendment to LEP 2014 in response to the Planning Proposal;

**Land** means Lot 1 DP 1234229, known as Sanderling Avenue, Hawks Nest;

**Law** means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

**LEP 2014** means the *Great Lakes Local Environmental Plan 2014*;

**Monetary Contribution** means the monetary contributions payable by the Developers under clause 6 of this agreement;

**Planning Proposal** means PP\_2019\_MIDCO\_001\_00 lodged with Council on 23 August 2018 and determined by Gateway Determination on 30 September 2019, seeking the following amendments to LEP 2014:

- (a) an amendment to the zoning of the subject Land from RE1 Public Recreation to R3 Medium Density Residential;
- (b) an amendment to the Floor Space Ratio Map to allow a maximum floor space ratio for the Land of 1:1;
- (c) an amendment to the Height of Buildings Map to allow a maximum building height of 12m for the Land;
- (d) an amendment to impose a minimum dwelling density on the Land of 30 dwellings per hectare;
- (e) an amendment to impose a minimum lot size on the Land of 1ha; and
- (f) an amendment to the Urban Release Area Map to include the Land.

**Register** means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

**Regulation** means the *Environmental Planning and Assessment Regulation 2000* (NSW); and

**Related Body Corporate** has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth).

## 2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;

- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred



to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;

- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

### 3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 2 of this agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this agreement addresses those requirements.

### 4 Application of this agreement

This agreement applies to:

- (a) the Land;
- (b) the Development; and
- (c) the Instrument Change.

### 5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.

### 6 Contributions to be made under this agreement

#### 6.1 Monetary Contribution

- (a) The Developers will pay to Council the Monetary Contributions in the amounts specified in Column 3 of Schedule 1, indexed in accordance with increases in the CPI from the date of this agreement to the date of payment.
- (b) Each Monetary Contribution must be paid to Council at the time specified in Column 4 of Schedule 1.
- (c) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (d) The Monetary Contribution will be taken to have been made when Council notifies the Developers that the bank cheque has been received and cleared funds or electronic funds have been deposited in Council's nominated bank account.
- (e) The parties agree and acknowledge that the Monetary Contribution will be used by Council towards the public purposes and the works specified in Columns 1 and 2 of Schedule 1.

## 7 Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

## 8 Registration of this agreement

### 8.1 *Developers Interest*

The Developers represent and warrant to Council that on the date of this agreement they are the registered proprietors of the Land.

### 8.2 *Registration of this agreement*

- (a) The Developers agree to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6(1) of the Act.
- (b) The Developers at their own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that Council reasonably requires to procure:
  - (i) the consent of each person who:
    - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
    - (B) is seized or possessed of an estate or interest in the Land,
  - (ii) the execution of any documents; and
  - (iii) the production of the relevant duplicate certificates of title,to enable the registration of this agreement in accordance with clause 8.2.
- (c) The Developers, at their own expense, will take all practical steps, and otherwise do anything that Council reasonably requires:
  - (i) to procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 10 Business Days after that date; and
  - (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.

### 8.3 *Removal from Register*

Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided Council

is satisfied the Developers have duly fulfilled its obligations under this agreement, and is not otherwise in default of any of the obligations under this agreement.

#### 8.4 Caveat

- (a) The Developers acknowledge and agree that:
  - (i) when this agreement is executed, Council is deemed to have acquired and the Developers are deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently Council will have a right to charge the land on account of the Monetary Contributions and will therefore have sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest; and
  - (ii) they will not object to Council lodging a caveat in the relevant folios of the Register for the Land nor will they seek to remove any caveat lodged by Council.
- (b) Council must, at Developers' cost, register a withdrawal of any caveat in respect of the Land within 10 Business Days after the Developers comply with clause 8.2 and must not lodge any other caveats on the titles to any of the Land.

### 9 Review of this agreement

- (a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- (c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

### 10 Dispute Resolution

#### 10.1 Reference to Dispute

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

#### 10.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) the nature of the dispute;
- (b) the alleged basis of the dispute; and
- (c) the position which the party issuing the Notice of Dispute believes is correct.

#### 10.3 Representatives of Parties to Meet

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute, or such further period as the parties may agree to in writing) meet in good faith to attempt to resolve the notified dispute.



- (b) The parties may, without limitation:
  - (i) resolve the dispute during the course of that meeting; or
  - (ii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

#### 10.4 *Further Notice if Not Settled*

If the dispute is not resolved in accordance with clause 10.3, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 10.5.

#### 10.5 *Mediation*

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 10 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Resolution Institute apply;
- (b) The mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Determination Notice, either party may request the President of the Resolution Institute to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must have:
  - (i) reasonable qualifications and practical experience in the area of the dispute; and
  - (ii) no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of Council is required to appoint a representative, Council must advise of the representative within 5 Business Days of the resolution);
- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
  - (i) each party will bear its own professional and expert costs incurred in connection with the mediation; and
  - (ii) the costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

## 10.6 *Litigation*

If the dispute is not *finally* resolved in accordance with this clause 10, then either party may litigate the dispute.

## 10.7 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement.

# 11 **Enforcement**

## 11.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice, it may refer the dispute to dispute resolution under clause 10 of this agreement.

## 11.2 *Bank Guarantee*

- (a) On the execution of this agreement, the Developers must provide to Council a Bank Guarantee in the amount of \$20,000 as security for the payment of the Monetary Contributions.
- (b) Council may call upon a Bank Guarantee provided under this clause if:
  - (i) the Developers are in breach of this agreement and have failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 21 Business Days) in writing to do so in accordance with clause 11.1 of this agreement; or
  - (ii) the Developers becomes insolvent.
- (c) Subject to clause 11.2(b), Council may apply the proceeds of a Bank Guarantee in satisfaction of:
  - (i) any obligations of the Developers under this agreement, and
  - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by Council because of the failure by the Developers to comply with this agreement.
- (d) If Council calls upon a Bank Guarantee to satisfy any obligations under this agreement, the Developers must provide a further Bank Guarantee to Council so



the total of all Bank Guarantees held by Council are equivalent to the amount specified in clause 11.2(a).

- (e) Council has the right to retain all Bank Guarantees held by Council under this clause 11.2 (including following any termination of this agreement) until the Developers have satisfied their obligations under this agreement.
- (f) Subject to clause 11.2(e) and any recourse Council may have had to any Bank Guarantee under clause 11.2(b), Council will release and return any Bank Guarantee(s) then held to the Developers within 30 days of receiving a written notice from the Developer requesting the release and return of the Bank Guarantee(s).
- (g) Nothing in this clause 11.2 prevents or restricts Council from taking any enforcement action in relation to:
  - (i) any obligation of the Developers under this agreement; or
  - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by Council because of the failure by the Developers to comply with this agreement,

that is not or cannot be satisfied by calling on a Bank Guarantee held by Council under this clause 11.2.

### **11.3 Restriction on Certificates**

In accordance with section 6.8 of the Act and clause 146A of the Regulation a Construction Certificate must not be issued for the Development unless the Developers have complied with all obligations under this agreement.

### **11.4 General Enforcement**

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
  - (i) a party from bringing proceedings in the NSW Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
  - (ii) Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

## **12 Assignment and Dealings**

### **12.1 Assignment**

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of all other parties.
- (b) Any change of ownership or control (as defined in section 50AA of the *Corporations Act 2001* (Cth)) of a party (excluding Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.

## 12.2 *Transfer of Land*

- (a) The Developers may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
  - (i) the Developers satisfy Council that the proposed Transferee is financially capable of complying with the Developers obligations under this agreement;
  - (ii) the Developers satisfy Council that the rights of Council will not be diminished or fettered in any way;
  - (iii) the Transferee delivers to Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developers under this agreement;
  - (iv) any default under any provisions of this agreement have been remedied by the Developers or waived by Council, on such conditions as Council may determine, and
  - (v) the Developers and the Transferee pay Council's reasonable costs in relation to the assignment.

## 12.3 *Dealings*

The Developers must not register any Dealing against the title to the Land, unless Council consents in writing to the registration of the Dealing, which consent must not be withheld in the circumstances described in clause 12.2, or in any other case must not be unreasonably withheld by Council.

## 13 Approvals and consents

Except as otherwise expressly stated in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## 14 No fetter

### 14.1 *Discretion*

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of Council, including, but not limited to, any statutory power or discretion of Council relating to the Development Application or any other application for Development Consent (all referred to in this agreement as a "**Discretion**").

### 14.2 *No fetter*

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied;
- (b) in the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

## 15 Notices

### 15.1 Notices

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address below, or at the address last notified by the intended recipient to the sender after the date of this agreement:
  - (i) to Council: Yalawanyi Ganya 2 Biripi Way, Taree 2430  
Email: council@midcoast.nsw.gov.au  
Attention: Manager Land Use Planning
  - (ii) to Core Property: 10 Davis Crescent, Port Macquarie 2444  
Email: hbgroup@bigpond.com  
Attention: Luke Goodwin
  - (iii) to Leric Group: 27 Claremount Road, Burwood Heights 2136  
Email: memo@mtistone.com.au.  
Attention: M.Ibrahim
- (c) is taken to be given or made:
  - (i) in the case of hand delivery, when delivered;
  - (ii) in the case of delivery by post, four Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of an email, that day. An email is not taken to have been received if the sender's computer reports that the message has not been delivered or if it is not received in full and legible form and the addressee notifies the sender of that fact within six (6) hours after the transmission ends or by 12 noon on the Business Day on which it would be otherwise treated as given or received, whichever is later.; and
- (d) if under clause 15.1(c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.



## 16 General

### 16.1 *Relationship between parties*

- (a) Nothing in this agreement:
  - (i) constitutes a partnership between the parties; or
  - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
  - (i) bind another party; or
  - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

### 16.2 *Time for doing acts*

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

### 16.3 *Further assurances*

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

### 16.4 *Variation*

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

### 16.5 *Records*

- (a) The Developers must keep and maintain financial and other relevant records to enable their compliance with this agreement to be verified, including any records required by law (**Records**).
- (b) The Records must be maintained in an accessible and secure form for a period of at least seven years from the date of their creation, or longer if required by law (**Period of Retention**).
- (c) At any time during the Period of Retention, by a written request to the Developers, Council or a representative may require the Developers to facilitate an inspection of the Records by a Council officer or auditor, and/or provide copies to them of such Records, and such inspection shall occur and/or copies must be provided within the time specified by Council in its request.

### 16.6 *Counterparts*

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one and the same instrument.

#### *16.7 Legal expenses and stamp duty*

The Developers must pay Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect and release and discharge of this agreement.

#### *16.8 Entire agreement*

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

#### *16.9 Representations and warranties*

The parties represent and warrant that they have the power and authority to enter into this agreement and comply with their obligations under the agreement and that entry into this agreement will not result in the breach of any law.

#### *16.10 Severability*

If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

#### *16.11 Invalidity*

- (a) A word or provision must be read down if:
  - (i) this agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.11(b) applies.

#### *16.12 Waiver*

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an

implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

#### **16.13 GST**

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Developers must pay the GST or pay to Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

#### **16.14 Governing law and jurisdiction**

- (a) The laws applicable in the State of New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and any courts competent to hear appeals from those courts.

#### **16.15 Survival**

Any provision of this agreement which implies or contemplates performance or observance subsequent to any termination or completion of this agreement, and the representations, warranties, covenants and indemnities of or by the parties contained in this agreement, will survive the termination (howsoever arising), expiry or completion of this agreement and continue in full force and effect.

#### **16.16 Trustee warranties and obligations**

- (a) If the Developers enter into this agreement as trustees of any trusts (**Trusts**), the Developers enter into this agreement personally and in their respective capacities as trustees, and represent and warrant that:
  - (i) they have been properly appointed as trustees of the Trusts and they are not in material default under the trust deeds of the Trusts;
  - (ii) the Trusts are validly constituted and have not terminated, no action has been taken to wind up, terminate or resettle the Trusts, and no date or event has occurred for the vesting of the assets of the Trusts;
  - (iii) they have in full force and effect the authorisations necessary to execute this agreement, perform all obligations under this agreement and allow this agreement to be enforced;
  - (iv) they have a right to be indemnified fully out of the assets of the Trusts concerning all of the obligations and liabilities incurred by them under this agreement, the assets of the Trusts are sufficient to satisfy that right in full, and they have not released or disposed of their equitable lien over the assets of the Trusts; and
  - (v) they have disclosed to Council full particulars of the Trusts and of any other trust or fiduciary relationship affecting the assets of the Trusts, and have given Council a complete, up to date copy of the relevant trust deeds of the Trusts.

- (b) If the Developers have entered into this agreement as trustees of Trusts, the Developers must give Council promptly upon request:
  - (i) any information concerning the financial condition (including the financial accounts), business, assets and affairs of the Trusts that Council reasonably requests; or
  - (ii) a statement from the duly appointed auditors of the Trusts attesting to the solvency and financial soundness of the Trusts and the trustee of the Trusts.



## Schedule 1 Monetary Contributions

Column 1 Public Purpose	Column 2 Works	Column 3 Monetary Contribution	Column 4 Timing
Contribution to Council to support the recovery and long-term management of the Hawks Nest and Tea Gardens koala population by surveying the status of the broader local population.	Engage suitable contractors to undertake an assessment of koala habitat and koala populations on the Viney Creek Sandbeds area and/or the Bundabah Creek area (koala roadkill cluster) north-west of Tea Gardens.  Collect local seed, propagate and recruit additional tallowwood trees in North Hawks Nest on Lot 201 DP 1155763 as a trial for enhancing the local tallowwood resource on which local coastal sands koalas appear to rely.	\$16,000  \$2,300	Monetary contribution to be made to Council: <ul style="list-style-type: none"> <li>• within 21 days after the Instrument Change is made;</li> <li>or</li> <li>• prior to the issue of the first Construction Certificate for the Development,</li> </ul> whichever occurs first.
	<b>Total</b>	<b>Total: \$18,300</b>	
Contribution to Council for improvements to Providence Park and works to the Micheal Rowe Walk.	Improvement works to Providence Park. Improvement works to that part of the Michael Rowe Walk, that forms part of the Tops to Myall Heritage Walking Trail, that traversers Pt Lot 7319 DP 1162737 from Sanderling Avenue in the north to Providence Park in the south.	<b>Total: \$89,500</b>	Monetary contribution to be made to Council prior to the issue of the first Construction Certificate for the Development.
Contribution towards improvements to the Hawks Nest Surf Club building and the provision of surf lifesaving equipment.	Improvements to the club and surf lifesaving equipment.	<b>Total: \$20,000</b>	Monetary contribution to be made to Council to provide to the Hawks Nest Surf Club prior to the issue of the first Construction Certificate for the Development.
<b>Total cost of Monetary Contributions:</b>		<b>\$127,800</b>	



## Schedule 2

## Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p><b>Planning instrument and/or Development Application – Section 7.4(1)</b></p> <p>The Developers have:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p><b>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</b></p>	<p>Lot 1 DP 1234229, also known as Sanderling Avenue Hawks Nest.</p>
<p><b>Description of the change to the environmental planning instrument to which the agreement applies or the development to which the agreement applies – Section 7.4(3)(b)</b></p>	<p>See definitions of “Development” and “Planning Proposal” in clause 1.</p>
<p><b>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)</b></p>	<p>See clause 6.1.</p>
<p><b>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</b></p>	<p>The application of section 7.11 of the Act is not excluded in respect of the Development.</p>
<p><b>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</b></p>	<p>The application of section 7.12 of the Act is not excluded in respect of the Development.</p>
<p><b>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</b></p>	<p>The application of section 7.24 of the Act is not excluded in respect of the Development.</p>
<p><b>Whether benefits under the Planning Agreement are or are not to be taken into consideration in determining a development contribution under section 7.11 – Section 7.4(e)</b></p>	<p>The benefits under the agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.</p>
<p><b>Mechanism for dispute resolution – Section 7.4(3)(f)</b></p>	<p>See clause 10.</p>
<p><b>Enforcement of the Planning Agreement – Section 7.4(3)(g)</b></p>	<p>See clause 11.</p>

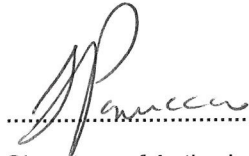
<b>Registration of the Planning Agreement – Section 7.4(3)(g)</b>	See clause 8.2.
<b>No obligation to grant consent or exercise functions – Section 7.4(9)</b>	See clause 14.

Executed as an agreement

**Executed** for and on behalf of **Mid-Coast** )  
**Council** ABN 44 961 208 161 by its )  
Authorised Delegate in accordance with a )  
resolution of Council dated 28 April 2021. )  
)  
)



Signature of Witness



Signature of Authorised Delegate

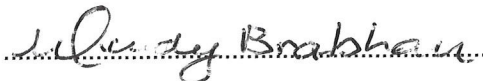
JESSICA ALCHIN

Print name of Witness

ADRIAN PANUCCIO / GENERAL MANAGER

Print name and position

**Signed by Core Property Development** )  
**Pty Ltd** ACN 614 364 519 as trustee for )  
Core Property Discretionary Trust (ABN )  
58 144 326 463) in accordance s127(1) of )  
the *Corporations Act 2001 (Cth)*. )  
)



Signature of Witness



Signature of Director

NOELY BRAHMAN

Print name of Witness

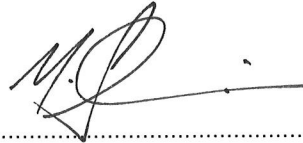
LUKE GOODWIN

Print name of Director

Signed by Leric Group Pty Ltd ACN 160 )  
854 562 as trustee for Hawks Nest )  
Discretionary Trust (ABN 51 478 521 341) )  
in accordance s127(1) of the *Corporations* )  
*Act 2001 (Cth)*. )  
)



Signature of Witness



Signature of Director

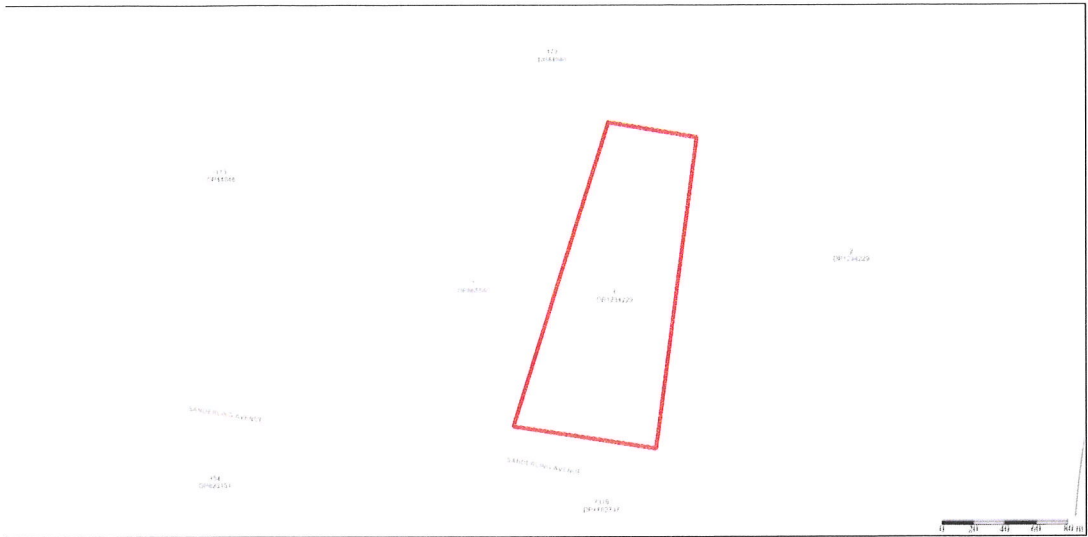
GIRLIE LAYNE

Print name of Witness

M. IBRAHIM

Print name of Director

Annexure A      Plan showing Land





## Annexure B                      Explanatory Note

# Voluntary Planning Agreement

*Environmental Planning & Assessment Regulation 2000 (clause 25E)*

### Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the voluntary Planning Agreement offered in connection with a planning proposal applying to the subject land (**the Planning Agreement**) in accordance with Section 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

The Planning Agreement will require the provision of monetary contributions in connection with a proposed amendment to provisions of the Great Lakes Local Environmental Plan 2014 (**LEP**).

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000 (the Regulations)*.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

### Parties

Core Property Development Pty Ltd and Leric Group Pty Ltd (**the Developers**) made an offer to Mid-Coast Council (**Council**) to enter into a voluntary Planning Agreement, in connection with a Planning Proposal relating to the subject land.

### Description of subject land

The land to which the Planning Agreement applies is described as Lot 1 DP 1234229, known as Sanderling Avenue, Hawks Nest (**the Land**).

## Description of the Planning Proposal to which the Planning Agreement applies

The Developers have proposed an amendment of the Great Lakes Local Environmental Plan 2014 (**LEP**) in response to planning proposal (PP\_2019\_MIDCOAS\_001\_00) seeking the following:

- (a) an amendment to the zoning of the subject Land from RE1 Public Recreation to R3 Medium Density Residential;
- (b) an amendment to the Floor Space Ratio Map to allow a maximum floor space ratio for the Land of 1:1;
- (c) an amendment to the Height of Buildings Map to allow a maximum building height of 12m for the Land;
- (d) an amendment to impose a minimum dwelling density on the Land of 30 dwellings per hectare;
- (e) an amendment to impose a minimum lot size on the Land of 1ha; and
- (f) an amendment to the Urban Release Area Map to include the Land.

The proposed amendment to the LEP is sought to facilitate the development of the Land for purposes which include medium density residential accommodation (**Development**).

## **Summary of Objectives, Nature and Effect of the Planning Agreement**

### **Monetary Contribution**

The Planning Agreement requires monetary contributions totalling \$127,800.00 to be paid towards:

- (a) recovery and long-term management of the Hawks Nest and Tea Gardens koala population;
- (b) improvements to Providence Park and works to the Micheal Rowe Walk; and
- (c) improvements to the Hawks Nest Surf Club building and/or the provision of surf lifesaving equipment.

## **Assessment of the Merits of the Planning Agreement**

### **How the Planning Agreement Promotes the public interest and objects of the Act**

In accordance with section 1.3 of the Act, the Planning Agreement promotes the public interest and objects of the Act and specifically achieves the objectives stated in section 1.3 because it:

- (a) promotes the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources (s 1.3(a));
- (b) facilitates the protection of the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats (s 1.3(e)); and
- (c) facilitates the promotion of the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants (s 1.3(h))

through the payment of contributions which will result in the delivery of a number of public benefits, including enhancement of the public domain areas and improvement of public amenity near the Land, the enhancement of community infrastructure near the Land, and the preservation of threatened and other species of native animals and plants, ecological communities and their habitats.

The proposed contributions under the Planning Agreement are consistent with Council's strategic plans and policy documents.

### **The Planning Purposes served by the Planning Agreement**

In accordance with section 7.4(2) of the Act, the Planning Agreement will require monetary contributions towards public purposes, including the provision of public amenities or public services, community infrastructure and the conservation or enhancement of the natural environment.

The Planning Agreement provides a reasonable means for achieving the abovementioned public purposes on the basis that the Planning Agreement:

- stipulates the timing for the monetary contributions; and
- restricts the progression of the Development unless the obligations are met.

### **How the Planning Agreement promotes the objectives of the *Local Government Act 1993* and the elements of Council's Charter (now section 8A)**

The Planning Agreement and the exhibition of the agreement and the planning proposal are consistent with the following purposes set out in section 7 of the *Local Government Act 1993*:

- to facilitate engagement with the local community by councils, councillors and other persons and bodies that constitute the system of local government; and
- to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective.

By enabling Council to provide public amenities to serve the needs of the general public and assist with the conservation of the environment, the Planning Agreement is consistent with the following guiding principles for councils set out in section 8A of the *Local Government Act 1993* (replacing Council's Charter):

- Councils should provide strong and effective representation, leadership, planning and decision-making.
- Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- Councils should consider the long term and cumulative effects of actions on future generations.
- Councils should recognise diverse local community needs and interests.
- Councils should consider the long term and cumulative effects of actions on future generations.
- Councils should consider the principles of ecologically sustainable development.
- Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

### **Whether the Planning Agreement Conforms with the Council's Capital Works Program**

The Planning Agreement will not affect Council's Capital Works Program and is not inconsistent with that program. The contributions under the Planning Agreement will be paid towards works that are not subject to Council's Capital Works Program.

### **Whether the Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**

The Planning Agreement requires some payments of the monetary contributions to be made to Council prior to the issue of a construction certificate as defined under section 6.4(a) of the Act for the Development.